



# House of Representatives

General Assembly

**File No. 662**

February Session, 2000

Substitute House Bill No. 5161

*House of Representatives, April 26, 2000*

The Committee on Planning and Development reported through REP. DAVIS of the 50<sup>th</sup> Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***An Act Concerning Lost And Replacement Wages For Injured Employees.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-308a of the general statutes is repealed and the  
2 following is substituted in lieu thereof:

3 (a) In addition to the compensation benefits provided by section 31-  
4 308 for specific loss of a member or use of the function of a member of  
5 the body, or any personal injury covered by this chapter, the  
6 commissioner, after such payments provided by said section 31-308  
7 have been paid for the period set forth in said section, may award  
8 additional compensation benefits for such partial permanent disability  
9 equal to seventy-five per cent of the difference between the wages  
10 currently earned by an employee in a position comparable to the  
11 position held by such injured employee prior to [his] such employee's  
12 injury, after such wages have been reduced by any deduction for

13 federal or state taxes, or both, and for the federal Insurance  
14 Contributions Act in accordance with section 31-310, and the weekly  
15 amount [which] that such employee will probably be able to earn  
16 thereafter, after such amount has been reduced by any deduction for  
17 federal or state taxes, or both, and for the federal Insurance  
18 Contributions Act in accordance with section 31-310, to be determined  
19 by the commissioner based upon the nature and extent of the injury,  
20 the training, education and experience of the employee, the availability  
21 of work for persons with such physical condition and at the  
22 employee's age, but not more than one hundred per cent, raised to the  
23 next even dollar, of the average weekly earnings of production and  
24 related workers in manufacturing in the state, as determined in  
25 accordance with the provisions of section 31-309. If evidence of exact  
26 loss of earnings is not available, such loss may be computed from the  
27 proportionate loss of physical ability or earning power caused by the  
28 injury. The commissioner shall determine the duration of such  
29 additional compensation [shall be determined] upon a similar basis,  
30 [by the commissioner,] but in no event shall the duration of such  
31 additional compensation exceed the [lesser] greater of (1) the duration  
32 of the employee's permanent partial disability benefits, or (2) [five  
33 hundred twenty] two hundred sixty weeks. In each fiscal year  
34 commencing on and after July 1, 2000, if the amount of additional  
35 compensation under subdivisions (1) and (2) of this subsection for  
36 employees receiving benefits for a period exceeding the duration of  
37 their permanent partial disability benefits is more than two million  
38 dollars, as determined by the Workers' Compensation Commission,  
39 the duration of such additional compensation shall not exceed the  
40 lesser of (A) the duration of the employees permanent partial disability  
41 benefits, or (B) five hundred twenty weeks. Additional benefits  
42 provided under this section shall be available only to employees who  
43 are willing and able to perform work in this state, and employees who  
44 are unable to perform work in this state due to a physical condition  
45 documented by a treating physician.

46 (b) Notwithstanding the provisions of subsection (a) of this section,  
47 additional benefits provided under this section shall be available only  
48 when the nature of the injury and its effect on the earning capacity of  
49 an employee warrant additional compensation.

50 (c) Notwithstanding the provisions of subsection (a) of this section,  
51 in calculating the additional compensation benefits available to an  
52 employee who is unable to perform work in this state due to a physical  
53 condition documented by a treating physician, the commissioner shall  
54 utilize the wages currently earned by an employee in this state in a  
55 position comparable to the position held by such injured employee  
56 prior to such employee's injury, after such wages have been reduced  
57 by any deduction for federal or state taxes, or both, and for the federal  
58 Insurance Contributions Act in accordance with section 31-310, and the  
59 weekly amount that such injured employee would probably be able to  
60 earn in this state thereafter, after such amount has been reduced by  
61 any deduction for federal or state taxes, or both, and for the federal  
62 Insurance Contributions Act in accordance with section 31-310, to be  
63 determined by the commissioner based upon the nature and extent of  
64 the injury, the training, education and experience of the injured  
65 employee, the availability of work in this state for persons with such  
66 physical condition and at the employee's age, but not more than one  
67 hundred per cent, raised to the next even dollar, of the average weekly  
68 earnings of production and related workers in manufacturing in this  
69 state, as determined in accordance with the provisions of section  
70 31-309.

71 Sec. 2. This act shall take effect July 1, 2000.

**PD Committee Vote:** Yea 11 Nay 6 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** Cost

**Affected Agencies:** Workers' Compensation Commission, State Treasurer (Second Injury Fund), Various State Agencies

**Municipal Impact:** Cost

**Explanation****State and Municipal Impact:**

The passage of this bill would result in additional costs to both the state and municipalities, and to the state Second Injury Fund.

The bill gives Workers' Compensation Commissioners more discretion in awarding extra wage differential benefits to workers who lose earning power because of job-related permanent partial disabilities, up to 260 weeks, regardless of the duration of the claimant's permanent partial disability (PPD) benefits. Current law allows commissioners to award these benefits only up to the duration of the claimant's PPD benefits.

The National Council on Compensation Insurance (NCCI) has provided an estimate that this bill would result in additional costs ranging from one-half of one percent (0.5%) to ten percent (10%) of total workers' compensation costs. This is a significant change from

their original estimate of 0.5%. While there is a serious lack of data on workers' compensation expenditures made by private insurance companies, our review of the NCCI data and their assumptions has narrowed the range from a low of 2% to a high of 8%. Costs would most likely be about 5%, depending on the decisions made by the commissioners.

The Department of Administrative Services estimates that state costs would range from \$2.1 million to \$3.2 million per year. (This is a range of 4% to 6% of total state of Connecticut workers' compensation costs.) The Treasurer's Office has estimated that while the bill would have a minimal fiscal impact (less than \$100,000) on second injury benefits, it would increase the no-insurance claims, which include stipulated settlements and medical and payroll benefits. They estimate costs to be between \$350,000 and \$450,000 per fiscal year. The administrative costs to the Treasurer's Office would be covered within current budgetary resources.

Most municipalities utilize insurance coverage for their workers' compensation costs. Thus, the estimated cost increase for their workers' compensation insurance premiums is from 2% to 8%, with 5% being most probable.

However, the bill establishes a limit on the amount of benefits that commissioners may award based on the total paid to all claimants. Beginning in FY 01, when the portion of wage loss benefits that are attributed to claimants receiving these benefits for the period longer than the duration of their PPD benefits reaches \$2 million, the commissioners must apply the same durational wage loss limits that exist in current law (i.e., only up to the duration of PPD benefits). Total workers' compensation payments are currently estimated to be about \$500 million, so even a 2% cost increase would be \$10 million. The \$2 million "cap" would allow for a cost increase of about 0.4%. Therefore, the expanded benefits might only be available for a short

time each fiscal year.

The bill requires the Workers' Compensation Commission (WCC) to determine when the \$2 million cap has been reached. At this time, the WCC does not have the ability to monitor and track these expenditures. They estimate that it would cost at least \$150,000 for computers and systems analysts to network with all of the workers' compensation insurers and self-insured entities to be able to determine when the cap has been reached.

The bill also allows a claimant who is unable to work in Connecticut due to a documented physical condition to receive workers' compensation benefits. This is anticipated to result in minimal costs.

The increase in the potential amount of wage loss differential benefits could encourage more workers to seek these greater benefits, resulting in fewer settlements between the claimants and insurance companies, and an increase in the number of hearings by the WCC. The increase in the number of cases and administrative costs for the WCC cannot be determined at this time.

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**OLR Bill Analysis****sHB 5161*****AN ACT CONCERNING LOST AND REPLACEMENT WAGES FOR INJURED EMPLOYEES.*****SUMMARY:**

This bill gives workers' compensation commissioners discretion to award wage differential benefits for up to 260 weeks (five years) even if the duration of the claimant's permanent partial disability (PPD) benefits is shorter. Current law allows commissioners to award wage differential benefits only up to the duration of the claimant's PPD benefits.

The bill limits the amount of wage differential benefits that commissioners may award based on the total paid to all claimants (see COMMENT). Beginning with Fiscal Year July 1, 2000, in any fiscal year when the portion of wage differential benefits attributable to claimants receiving these benefits for a period longer than the duration of their PPD benefits reaches \$2 million, commissioners cannot award wage differential benefits for a period longer than the claimant's PPD benefit duration. Essentially, once the \$2 million mark is met, commissioners must apply the same durational wage differential limits that exist in current law. The Workers' Compensation Commission determines when \$2 million has been awarded.

In general, pursuant to a state Supreme Court decision, the law that is in place at the date of injury governs a given claim. Therefore, presumably the cap could only affect claims for injuries that occur after October 1, 2000.

The duration of PPD benefits ranges from one week for injury to a tooth to 10 years for permanent disability to the heart or brain.

The bill allows a claimant to receive benefits if he is unable to work in the state due to a physical condition documented by a physician. Currently, a claimant must be willing and able to work in Connecticut

to receive these benefits. Benefits are based on Connecticut wages and cannot exceed the state average weekly production wage (currently \$637).

EFFECTIVE DATE: October 1, 2000

## **BACKGROUND**

### ***PPD Benefits***

A commissioner may award wage differential benefits after a claimant's PPD benefits have ended. PPD benefits are for loss of body parts or a reduction of function in a body part. The duration and amount of PPD awards are set in statute.

### ***Wage Differential Benefits***

Wage differential benefits compensate claimants for their loss of earning power. They are calculated as 75% of the difference between what the claimant earned in take-home pay prior to the injury and what he is able to earn in take-home pay after the injury, taking into consideration such things as the extent of the injury and the claimant's education, experience, and age. They cannot exceed the state average weekly production wage (currently \$637).

### ***Legislative History***

On March 29, the House referred the bill to the Appropriations Committee, which reported it favorably on April 4. On April 11, the House referred the bill to the Planning and Development Committee, which reported it favorably with substitute language on April 17. The substitute language added the \$2 million limit on increases in wage differential benefits.

## **COMMENT**

### ***Possible Ambiguities Concerning Implementation***

It is not clear how employers and insurance companies could simultaneously track the amount of benefits that they pay that count



toward the \$2 million cap. The bill does not require them to report to any central entity such as the Workers' Compensation Commission. In addition, it is not clear how stipulations or settlements agreed to between employers and claimants count toward the cap. Commissioners commonly make retroactive awards of wage loss benefits. The bill does not specify whether retroactive claims apply to the year in which they are awarded or to the year in which the injury occurred.

### **COMMITTEE ACTION**

#### Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9      Nay 2

#### Appropriations Committee

Joint Favorable Report

Yea 24      Nay 22

#### Planning and Development Committee

Joint Favorable Substitute

Yea 11      Nay 6